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09/128,573 08/04/98 MAKI R 10739.17.22

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EXAMINER

MCKINLEY, K

ART UNIT

PAPER NUMBER

3619

DATE MAILED: 08/23/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/128,573

Applicant(s)
Maki

Examiner
Kevin McKinley

Group Art Unit
3619



☒ Responsive to communication(s) filed on Jun 13, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 835 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-18 is/are pending in the applicat

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-18 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

Drawings

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-6,9-10, 15-16, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graves in view of Hisada.

Graves discloses an all terrain vehicle 10 comprising a chassis carrying a straddle-type seat which is sufficiently narrow to be straddled by a rider; a front wheel (24) mounted to the chassis (22), handlebars connected to the front wheel, a pair of rear wheels (26) mounted to the chassis (22), a laterally extending footrest (12) on both sides of the chassis (22), an engine carried by the chassis and connected to a manual transmission which in turn is connected to a drive chain supplying motive power to at least some of the wheels, the transmission including a foot-operable

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shift lever (36) located on one side of the chassis adjacent the footrest (12) for shifting the transmission among a plurality of forward gears, the footrest having a horizontal heel (32) portion. The heel portion is raised above the portion which would house the toe of the riders boot, as best seen in figure 3B. The shift lever (36) is positioned above the toe portion of the footrest, and the toe portion is the area in front of and lower than the heel portion 68 and stops before the bar 44 connects with bar 50. The toe portion is positioned lower than the heel portion, permitting a rider to slide the shoe under the shift lever and shift the lever to change the transmission. The gear shifting lever (36) is movable vertically through a range of motion having upper and lower ends, the shift lever (36) being spaced above the toe area of the footrest when the shift lever (36) is at its lower end of movement (See, Fig 1; see also, col 2, lines 60-65; col 4, lines 1-5). Graves, while it shows the area provided for the heel and toe, does not specifically show a footrest with a base made for placement of the toe and heel. However, Hisada discloses a laterally extending footrest (22c) on one sides of the chassis (10), the footrest is made up of two distinct regions, the heel section 22a and the toe section 62a,b, and 63 with section 62 ramping up from section 63 to prevent the boot from sliding through the toe area. The heel section 22a is located above the toe section, as best seen by figure 5. It would have been obvious to one of ordinary skill in the art at the time the invention was made to insert the footrest like that taught by Hisada and insert it into the vehicle of Graves in order to have a place for the foot to set when not used to operate the vehicle, with the toe of the rider placing under the gear shifting lever which

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will allow quick shifting by raising of the foot. The solid footrest will also allow protection for the foot from ground articles during operation.

Hisada impliedly discloses that the footrest should have ample space to comfortably receive the rider's foot and provide protection from the elements. Consequently, Hisada is construed to impliedly disclose and/or suggest the following:

- i. that the heel and toe portions are defined by a continuous platform having a width of at least about four inches and a length of at least about one foot, and that the shift lever is at least about three inches forwardly of the heel portion of the footrest; and,
- ii. that the footrest has a width of at least about four inches and a length of at least about one foot; and,
- iii. that the footrest has a width of at least about five inches and a length of at least about fifteen inches.

As for the feature of the platform footrest holes which permit water to drain therethrough, such holes being sized and positioned to prevent a rider's shoe from extending therethrough, this is an obvious feature as shown in Hisada's fig 4 and elements 59 and 72.

However, absent a teaching of criticality regarding the specific dimensions pointed out in elements i, ii, and iii, the limitations set forth therein are construed as obvious design choices.

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Additionally, absent a teaching of criticality of the dimensions of the footrest and the spacing of the shifting lever, the examiner considers the claimed dimensions (i.e., claim 3, 10, 15, 16) to be design choices based upon the average size of a person's foot or shoe.

4. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graves in view of Hisada, as applied to claim 6 above, and further in view of Walters et al.

Graves and Hisada combine to disclose each of the elements of claim 6, as set forth above. Neither Graves nor Hisada discloses a cleat disposed at a forward edge of the heel portion, the cleat being formed integrally with the platform, defining the forward edge of the heel portion and the rearward edge of the toe portion, and further having an upper surface positioned higher than the heel portion of the footrest. In contrast, Walters et al. depicts a footrest for a recreational vehicle (see Figure 1) having a cleat (Id) disposed at a forward edge of the heel portion, the cleat being formed integrally with the platform, defining the forward edge of the heel portion and the rearward edge of the toe portion and further having an upper surface positioned higher than the heel portion of the footrest. The cleat portion allows the rider to keep a secure grip on the footrest. It would have been obvious to modify the combination of Graves and Hisada in accord with the teaching of Walters to include an integrally-formed, raised cleat portion, which defines the boundary between the heel portion and toe portion of the platform, in order to prevent injury that may result from the rider's feet from slipping off the footrest.

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5. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graves in view of Hisada, and further in view of Millican.

Graves as modified by Hisada does not specifically disclose that the shift lever is positioned at generally the same height as the heel portion. However, Millican discloses a motorcycle foot guard having a heel portion (33) at generally the same height as the shift lever, as broadly claimed by the applicant, (19) in order to make the shift lever readily accessible to the rider. It would have been obvious to modify the all-terrain vehicle of Graves in accord with the teaching of Millican and Hisada to include a footrest having a raised heel portion adjacent to a manual-transmission shifting lever wherein the raised heel portion of the footrest is generally the same height as the shift lever in order to make shifting gears easier for the rider, and provide a protective resting place for the rider's feet.

6. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graves in view of Hisada and further in view of Walters.

Graves as modified by Hisada does not disclose that the footrest should include a side wall. However, Walters, et. al. discloses a footrest for an all-terrain vehicle having front walls *and* side walls (see, Fig 1). Side walls help keep the rider's feet on the platform. It would have been obvious to one having ordinary skill in the art to modify the all-terrain vehicle of Hisada in accord with the teaching of Walters to include a sidewall to reduce the risk of injury resulting from the rider's foot becoming dislodged from the footrest.

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Response to Arguments

7. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin McKinley whose telephone number is (703) 306-5782. If Kevin can not be reached, please contact Lanna Mai, at (703) 308-2486.

KM

August 18, 2000

 8/22/00
KEVIN HURLEY
PRIMARY EXAMINER